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No. 81-2366.

In the
Supreme Court of the United States.

OCTOBER TERM, 1981.

EFRAIN FIGUEREDO, ET AL.,
PETITIONERS,

v.

SOUTH FLORIDA BEVERAGE CORPORATION,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT.

Brief in Opposition to Petition for a Writ of Certiorari.

Opinions Below.

The order of the trial court (the Circuit Court for Dade County) was entered on October 10, 1980 (Pet. App. 24-26). The decision of the District Court of Appeal of Florida, Third District, was filed on December 22, 1981 and is reported at 409 So.2d 490 (Pet. App. 12-22). A motion for rehearing was denied on February 9, 1982 (Pet. App. 23). The Florida Supreme Court denied a petition for certiorari on May 28, 1982 (Pet. App. 27).

Statute and Regulations Involved.

Section 7(a)(1) of the Fair Labor Standards Act, 29 U.S.C. § 207(a)(1), provides as follows:

> Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

29 C.F.R. § 778.112 provides:

> *Day rates and job rates.* If the employee is paid a flat sum for a day's work or for doing a particular job, without regard to the number of hours worked in the day or at the job, and if he receives no other form of compensation for services, his regular rate is determined by totaling all the sums received at such day rates or job rates in the workweek and dividing by the total hours actually worked. He is then entitled to extra half-time pay at this rate for all hours worked in excess of 40 in the workweek.

29 C.F.R. § 778.114(a) provides:

> *Fixed salary for fluctuating hours.* (a) An employee employed on a salary basis may have hours of work which

fluctuate from week to week and the salary may be paid him pursuant to an understanding with his employer that he will receive such fixed amount as straight time pay for whatever hours he is called upon to work in a workweek, whether few or many. Where there is a clear mutual understanding of the parties that the fixed salary is compensation (apart from overtime premiums) for the hours worked each workweek, whatever their number, rather than for working 40 hours or some other fixed weekly work period, such a salary arrangement is permitted by the Act if the amount of the salary is sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked in those workweeks in which the number of hours he works is greatest, and if he receives extra compensation, in addition to such salary, for all overtime hours worked at a rate not less than one half his regular rate of pay. Since the salary in such a situation is intended to compensate the employee at straight time rates for whatever hours are worked in the workweek, the regular rate of the employee will vary from week to week and is determined by dividing the number of hours worked in the workweek into the amount of the salary to obtain the applicable hourly rate for the week. Payment for overtime hours at one-half such rate in addition to the salary satisfies the overtime pay requirement because such hours have already been compensated at the straight time regular rate, under the salary arrangement.

Statement of the Case.

This is an action by 63 route drivers against their employer, South Florida Beverage Corporation (the "Company"),[1] for

[1] South Florida Beverage Corporation is a wholly-owned subsidiary of Holiday General Corporation, which is in turn a wholly-owned subsidiary

overtime compensation payments allegedly required by the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* ("FLSA").

As delivery truck drivers, petitioners spent virtually their entire working time servicing routes away from the Company's premises and without any direct supervision or control (Record Appendix in District Court of Appeal ("R.") 57-58, 217, 230-232). Their actual work hours fluctuated from day to day and week to week, depending on such factors as traffic and the speed and ability of the driver (Pet. App. 15; R. 52, 57-58, 216-217, 230-232, 561-580). The drivers sometimes worked more, and sometimes less, than eight hours per day and forty hours per week, respectively. *Id.*

In 1975, the drivers selected as their exclusive representative for collective bargaining purposes Local 8430 of the United Steelworkers of America (the "union") (Pet. App. 32; R. 174). As a result of collective bargaining, the parties' 1975-1978 agreement provided that the drivers would receive overtime pay computed "in accordance with the procedure outlined in Interpretive Bulletin Section 778.114 of the Wage and Hour Administrator, entitled 'Fixed Salary for Fluctuating Hours'" (Pet. App. 14; R. 391, 398). At the same time, the parties entered into a sideletter providing that:

> For the first six weeks after the contract is signed, the Company may schedule employees to work in excess of *50* hours in a given work week. Thereafter, under normal circumstances, the Company will not schedule an employee to work a regular work week in excess of *fifty* (*50*) hours.

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of General Cinema Corporation. Affiliated corporations (which are directly or indirectly owned by General Cinema Corporation) are set forth in Appendix A.

(R. 419, 421; *Plaintiffs' Exhibit 1* (emphasis added).) Shortly thereafter, the union requested and the Company agreed to treat Saturday work separately in determining weekly overtime pay, as is permitted by 29 U.S.C. § 207(e)(6) (premium Saturday pay not included in "regular rate"). *See* Pet. App. 15 n.5.

During the term of the 1975-1978 collective bargaining agreement, the Company paid the drivers a guaranteed, fixed sum of one-fifth of their designated salary for each day that they performed some work, regardless of the number of hours worked (Pet. App. 15; R. 235-236, 566, 569). In accordance with this practice, a driver was paid a full day's pay even if he worked less than eight hours that day (R. 187-189). If a driver worked more than forty hours in a particular week the Company, in accordance with guidelines published by the Wage and Hour Division of the U.S. Department of Labor (R. 383, 452), computed the driver's "regular rate" for that week by dividing the designated weekly salary (excluding any premium or non-statutory overtime payments as provided in §§ 7(e)(5) and 7(e)(7)) by the hours worked during that week (Pet. App. 15). The Company then paid such drivers overtime compensation, in addition to the compensation already paid for that week, at one-half their "regular rate" for each hour worked over forty (Pet. App. 15). The reason for this method of computing overtime was that under a "daily rate" arrangement, the total "daily rate" payments which the drivers received compensated them at "straight time" rates for whatever hours they worked that week. Therefore, in order to provide the employees with one and one-half times their "regular rate," an additional payment for overtime hours at one-half the "regular rate" for that week was necessary (Pet. App. 15, 17, 18 n.7; 29 C.F.R. § 778.112; *cf. id.* § 778.114).

The Company consistently followed these pay practices during the term of the 1975-1978 agreement (R. 236, 241-245, 299-304, 317, 319, 335-336, 385-386, 569). At no time did

petitioners — several of whom were officers of the union (R. 31, 39, 55, 182) — or any other drivers file any grievance or even suggest that the Company was violating the agreement (R. 176-177, 216-218, 250-251, 408, 431, 584). Nor did the union. *Id.*

In the 1978 collective bargaining negotiations (in which several of the petitioners participated), the union proposed a change to an hourly method of pay, but this proposal was rejected (R. 76, 81-86, 199, 213-215, 575-579). As a compromise, the parties agreed not to change the underlying "daily rate" method of pay, but agreed to increase overtime compensation to an additional payment at the employee's "straight time" rate for that week (*id.*; Pet. App. 15). Thus, the Company agreed as a contractual matter to a *higher* overtime premium than was required by the FLSA, but less than petitioners now claim to be due (Pet. App. 15).

Under the 1978 agreement, the Company continued to pay employees on a "daily rate" basis without any objection that this method of payment violated the 1978 agreement. Although one driver apparently complained to the Department of Labor concerning the Company's method of overtime pay (Pet. App. 44), the Department instituted no proceedings and made no suggestion that the Company was in violation of the FLSA. Petitioners thereafter brought this action in the Circuit Court for Dade County, Florida.

After a non-jury trial, the Circuit Court issued an order, without opinion, concluding that the Company had not computed overtime pay in accordance with the requirements of the FLSA (Pet. App. 24-26). The trial court found that the Company had paid overtime on the basis "that daily wages equal to one-fifth of the weekly wage stated in the contract was to cover all of the hours which [the employees] were required to work during the day" (Pet. App. 24). However, relying "almost entirely upon a single clause" in the governing

collective bargaining agreement (Pet. App. 13-14), the trial court ruled that the Company was required to pay overtime on the basis that the employees received fixed pay for fixed hours (Pet. App. 25).

On appeal, the District Court of Appeal of Florida, Third District, ruled that the Company had not violated the FLSA. Relying on this Court's decisions in *Walling* v. *Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419 (1945), *Bay Ridge Operating Co.* v. *Aaron*, 334 U.S. 446 (1948), and progeny, the District Court of Appeal ruled that:

> the polestar in the determination of the "regular rate" question is the reality of the particular situation, that is, what hours and methods of pay were adopted "in actual fact" by the employer and employee.

(Pet. App. 14.) On the basis of the "actual facts," including the contractual provision referring to § 778.114, the Company's consistent and unchallenged practice over the term of two collective bargaining agreements, and the bargaining history of the second of those agreements (Pet. App. 15-16, 21-22), the District Court of Appeal found that "everyone, without issue, dispute, or complaint, treated the agreement" as one under which "a driver received a guaranteed payment of one-fifth of his designated weekly salary for each weekday he reported for work no matter how many hours he worked on that particular day" (Pet. App. 15, 22). Since the employees were "paid on a flat-sum-per-day-regardless-of-hours-worked basis" (Pet. App. 14), the court concluded that the Company's method of computing overtime pay was precisely the one authorized by the applicable regulations of the U.S. Department of Labor, 29 C.F.R. § 778.112; *cf. id.* § 778.114. *See* Pet. App. 15, 19.

Argument.

I. The Writ Should be Denied Because It was Not Timely Filed.

The petition for certiorari should be denied because it was not filed in timely fashion. The District Court of Appeal rendered final judgment on December 22, 1981 and denied rehearing on February 9, 1982. Any petition for certiorari therefore was required to be filed on or before May 10, 1982. 28 U.S.C. § 2101(c). In fact, the petition was not filed until June 25, 1982.

Petitioners contend, in reliance on *American Railway Express Co.* v. *Levee*, 263 U.S. 19 (1923), that "the time for filing here is computed from the date the Florida Supreme Court refuses to accept its discretionary jurisdiction" (Pet. 2). Petitioner's reliance on *Levee* is misplaced because in this case, unlike *Levee*, the state Supreme Court did not have jurisdiction, discretionary or otherwise, to review the judgment in question.

On July 1, 1957, the Florida state Constitution was amended to establish the district courts of appeal as "*courts of final, appellate jurisdiction*," *Lake* v. *Lake*, 103 So.2d 639, 642 (Fla. 1958) (emphasis in original). *Accord, Ansin* v. *Thurston*, 101 So.2d 808, 810 (Fla. 1958), *cited with approval, Williams* v. *Florida*, 399 U.S. 78, 80 n.5 (1970).[2] At the same time, the jurisdiction of the Florida Supreme Court was sharply curtailed. Florida Constitution, Article V, § 3. That court is required to hear appeals in cases "imposing the death penalty," "declaring invalid a state statute or a provision of the state constitution," or involving certain other specific situations not

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[2] The petitioner in *Williams* was represented by the same attorney who represents petitioners herein.

applicable here. Fla. Const., Art. V, § 3(b)(1),(2). In addition, the Florida Supreme Court may, in its discretion, review decisions in a narrowly-circumscribed classification of cases. *Id.*, Art. V, § 3(b). The principal provision concerning the Florida Supreme Court's discretionary jurisdiction — and the sole ground invoked by petitioners in their brief to the Florida Supreme Court — confers the discretion to review a decision of a district court of appeal that "expressly and directly conflicts" with a decision of another district court of appeal or of the state Supreme Court "on the same question of law." *Id.*, Art. V, § 3(b)(3).[3]

This case did not come within that category. There was no decision of the Florida Supreme Court, or of any district court of appeal, which "expressly and directly" conflicted with the decision in this case "on the same point of law." Both of the cases relied upon by petitioners in the Florida Supreme Court (*see* Pet. 6) involved factual and legal issues which were entirely different from those involved here. *Westerman* v. *Shell's City, Inc.*, 265 So.2d 43 (Fla. 1972), involved a breach of an oral contract to sell a liquor license. *Shaw* v. *Shaw*, 334 So.2d 13 (Fla. 1976), involved a trial court's award of alimony in connection with a divorce decree. Neither case involved the Fair Labor Standards Act or interpretation of collective bargaining agreements; indeed, neither involved labor or employment-related matters of any kind.[4]

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[3] Prior to 1968, the Florida Supreme Court had the discretion to review decisions of the district courts of appeal that were "in direct conflict" with such other decisions. In 1968, the Florida Constitution was amended to narrow this jurisdiction to its present scope.

[4] Petitioners contended in the Florida Supreme Court that the decision below "expressly and directly" conflicted with the cited cases because (in petitioners' view) the District Court of Appeal "reweighed the evidence" (*see* Pet. 6) in a manner allegedly proscribed by *Shaw* and *Westerman*. Wholly apart from the merits of such a contention, the Florida Supreme Court has made clear that Article V, § 3(b)(3) does not confer jurisdiction to review the particular application of legal principles to unique factual situations, but

Although the Florida Bar has repeatedly been warned that Article V, § 3(b)(3) does not convert the Florida Supreme Court into a "'court of selected errors,'" *Nielsen* v. *City of Sarasota*, *supra*, 117 So.2d at 734, petitioners sought to obtain two appeals on the merits in the Florida state courts. As the Florida Supreme Court has repeatedly held, *see, e.g.*, *Ansin* v. *Thurston*, *supra*, it lacks jurisdiction to provide such a second appeal. The District Court of Appeal therefore was the highest court of Florida in which a decision could be had, 28 U.S.C. § 1257, and any petition for certiorari was due within ninety days of that court's denial of rehearing.[5]

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rather to review "the announcement of a *rule of law*" which conflicts with established precedent or to review a decision which reaches a conflicting conclusion in a case involving *substantially the same controlling facts* as were involved in the allegedly conflicting precedents. *Nielsen* v. *City of Sarasota*, 117 So.2d 731, 734 (Fla. 1960) (emphasis in original).

[5] In its Order, the Florida Supreme Court stated that it had "determined that it should decline to accept jurisdiction" (Pet. App. 27), but did not expressly state the reason for this determination. In these circumstances, this Court's announcement in *Norfolk & Suburban Turnpike Co.* v. *Virginia*, 225 U.S. 264, 269 (1912), is applicable:

> we now state that, from and after the opening of the next term of this court, where a writ of error is prosecuted to an alleged judgment or a decree of a court of last resort of a State declining to allow a writ of error to or an appeal from a lower state court, unless it plainly appears, on the face of the record, by an affirmance in express terms of the judgment or decree sought to be reviewed, that the refusal of the court to allow an appeal or writ of error was the exercise by it of jurisdiction to review the case upon the merits, we shall consider ourselves constrained to apply the rule announced in the *Crovo Case*, and shall therefore, by not departing from the face of the record, solve against jurisdiction the ambiguity created by the form in which the state court has expressed its action.

II. The Writ Should be Denied Because There is No Substantial Federal Question Warranting Review.

This case presents no issue which warrants the granting of certiorari. There is no constitutional question. Since the case arose in the Florida state court system, this case obviously involves no conflict among the circuits. There is no conflict alleged between the decision below and any decision of a federal court of appeals or state court of last resort.[6] Cf. Supreme Court Rule 17.1(b). The petitioners do not contend that the decision below conflicts with any decisions of this Court. Supreme Court Rule 17.1(c). Indeed, the petitioners do not take issue with the reliance by the District Court of Appeal (Pet. App. 14-15) upon this Court's decisions in *Walling* v. *Youngerman-Reynolds Hardwood Co., supra, Bay Ridge Operating Co.* v. *Aaron, supra*, and progeny.

The District Court of Appeal's application of the FLSA likewise presents no "important question of federal law." Supreme Court Rule 17.1(c). The decision below involves no question of general statutory interpretation, but only the application of settled principles to the particular facts of this case. The decision below thus affects only the parties thereto, and has no general legal significance.

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[6] *Brennan* v. *Elmer's Disposal Service, Inc.*, 510 F.2d 84 (9th Cir. 1975), which petitioners claim is "[t]he closest case factually on point," is neither factually similar nor legally apposite. That case involved a so-called "Belo"-type plan in which an employer pays its employees a weekly salary in a fixed amount which *includes* overtime pay. 29 U.S.C. § 207(f) establishes strict prerequisites for such a plan, including an agreement which specifies the employees' regular rate and provides for overtime compensation and a weekly guarantee of pay which covers no more than 60 hours. In *Elmer's Disposal Service*, these statutory requirements were not met.

This case, by contrast, does not involve a "Belo" contract or § 207(f). The rates of pay established by the parties' collective bargaining agreements did not *include* overtime, but rather provided for *additional* overtime pay, computed on a "fluctuating hours" basis.

The "Questions Presented" by petitioners underscore the lack of a substantial federal question (Pet. 1). The first "Question Presented" concerns the scope of review of a Florida appellate court over a Florida trial court — an issue of state law.[7]

The second "Question Presented" — whether the "daily rate" method of pay is "appropriate" in "the absence of an explicit agreement" when "the daily schedule is controlled by the employer" — presents no substantial issue under established federal law. The Department of Labor's regulation concerning day rates, 29 C.F.R. § 778.112, upon which the District Court of Appeal specifically relied (Pet. App. 17), does not require an "*explicit* agreement," and is applicable regardless of whether "the daily schedule is controlled by the employer."[8] There is no sound reason — and none is offered by petitioners — for this Court to require the Department

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[7] None of the decisions of this Court cited by petitioners (Pet. 7) are remotely similar to this case. *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697 (1945), involved the legal effect of an employee's release of FLSA claims. The Court ruled that the legal effect depended on whether the release was intended as a full settlement of the employee's claims or only a waiver of liquidated damages. *Id.* at 703. In so ruling, the Court held that although the state courts had made no finding on that issue, the Court was not precluded from reviewing the evidence.

The remaining decisions cited bear even less resemblance to this case. *Norris* v. *Alabama*, 294 U.S. 587 (1935), involved the exclusion of blacks from a grand jury which indicted a black for rape. *Wilkerson* v. *McCarthy*, 336 U.S. 53 (1949), and *Harris* v. *Pennsylvania R.R.*, 361 U.S. 15 (1959), involved the special status of jury verdicts for employees under the Federal Employers Liability Act. *Perma Life Mufflers, Inc.* v. *International Parts Corp.*, 392 U.S. 134 (1968), involved a *federal* court of appeals ruling that a corporation was barred from bringing an antitrust action against an affiliated corporation under the *in pari delicto* theory.

[8] Petitioners' reference to 29 C.F.R. § 778.405 is completely misplaced. That regulation concerns "Belo" contracts under Section 7(f), *see* note 6, *supra*, and has nothing to do with "daily rate" or "fluctuating workweek" arrangements.

of Labor to engraft these additional requirements onto its regulation.[9]

In any event, the District Court of Appeal properly concluded that the Company's "daily rate" method of pay was lawful in this case.

Under the FLSA, employees must be paid for hours worked in excess of forty per week at one and one-half times their "regular rate." 29 U.S.C. § 207(a)(1). As this Court has repeatedly held, an employee's "regular rate" within the meaning of the FLSA "must be drawn from what happens under the employment contract" between the employee and his employer. *Bay Ridge Operating Co.* v. *Aaron*, *supra*, 334 U.S. at 464; *see Walling* v. *Youngerman-Reynolds Hardwood Co.*, *supra*. It is undisputed as to "what happened" in this case: both collective bargaining agreements and the sideletter contemplated fixed pay for fluctuating hours; for over three years, over the term of these two agreements, "employees were, in fact, paid on a flat-sum-per-day-regardless-of-hours-worked basis" (Pet. App. 14), and this practice was "accepted by the drivers and their union" without any complaint that this practice violated those agreements (Pet. App. 13; R. 176-177, 216-218, 584). In these circumstances, the District Court of Appeal properly concluded that the parties in fact agreed to a fixed rate for fluctuating hours and not a fixed rate for fixed hours. The court's conclusion was supported by (among other things) the following *undisputed* facts:

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[9] Petitioners' contention proceeds from two erroneous factual predicates. First, the Company did *not* have daily control of the work schedule or control over the actual hours worked by employees. Second, there was overwhelming evidence to support the conclusion of the District Court of Appeal that the parties "in actual fact" adopted the "flat-sum-per-day-regardless-of-hours-worked basis" by which the Company computed overtime.

1. The 1975-1978 collective bargaining agreement provided that overtime would be paid in accordance with 29 C.F.R. § 778.114, which contemplates fixed pay for *fluctuating* work hours (R. 391, 398).

As the District Court of Appeal noted (Pet. App. 21), if the parties had intended to provide fixed pay for fixed hours, they never would have included this provision in the contract.

2. At the time that the 1975-1978 agreement was negotiated, the parties confirmed in a letter of understanding that the "regular work week" would not exceed *fifty* hours under normal circumstances (R. 419, 421; *Plaintiffs' Exhibit 1*).

Once again, if the parties had intended to provide fixed pay for a fixed workweek of 40 hours, they never would have agreed to such a sideletter.

3. At all times, the drivers' work hours in fact fluctuated from day to day and week to week, sometimes more and sometimes less than 8 hours per day or 40 hours per week, respectively (R. 52, 57-58, 216-217, 230-232, 561-580).

4. At all relevant times the Company paid the drivers a fixed sum for each day that they worked, even if they worked less than eight hours in the day (R. 235-236, 566, 569). One of the drivers who is a petitioner herein specifically admitted that such was the case (R. 187-189).

The Company's payment of the full daily rate for days on which an employee worked less than eight hours is particularly significant, because it is inconceivable that the Company would have paid a full day's pay for a "short" workday unless it was contractually obliged to do so.[10]

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[10] Having accepted for several years the benefit of receiving a full day's pay for "short" workdays, it is completely inconsistent for petitioners to claim

5. The Company consistently followed its practice for over three years, during the term of two successive collective bargaining agreements (R. 236, 241-245, 299-304, 317, 319, 335-336, 385-386, 569).

6. During the terms of those two agreements, neither the petitioners — several of whom were officers of the union (R. 31, 39, 55, 182) — nor the union filed any grievance or even suggested that the Company was violating the collective bargaining agreements (R. 176-177, 216-218, 250-251, 408, 431, 584).

The District Court of Appeal was warranted in concluding that no grievance or complaint was raised because "everyone" recognized that the Company's practice *conformed* to the parties' actual agreement or understanding.[11]

7. In the 1978 collective bargaining negotiations (in which several of the drivers participated), the union proposed a change to an hourly method of pay but this proposal was rejected (R. 82-86, 199, 213-215, 575-579).

This bargaining history shows that the agreements did *not* in fact establish an hourly method of pay.

8. In the 1978 negotiations, the parties agreed to increase overtime compensation from the additional half-time required by the FLSA to an additional straight-time. *Id.*

This bargaining history was extremely significant to the court, because if the 1975 agreement had established a fixed rate of pay, and a requirement of an *additional*

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that there was no such arrangement and that they should in addition have received overtime pay computed on a fixed hours basis instead of a fluctuating hours basis.

[11] In short, the drivers' failure to object to the Company's method of payment was *not* merely a waiver of rights but a recognition that no contractual rights were being violated.

> time and one-half for overtime hours, the union never would have sought (much less agreed to) such a change (Pet. App. 22).

Against this evidence, petitioners place virtually their entire reliance on the provision of the 1975-1978 agreement that "the regular workweek" would be forty hours (Pet. 3). However, in light of the contract's reference to § 778.114, the letter of understanding referring to a workweek of fifty hours or more, and the parties' longstanding and uncontested practice, the District Court of Appeal properly concluded that this single provision was not dispositive:

> Viewed in this light, the forty-hour provision simply does not mean — or even say — what the [trial] court held it did. Indeed, it does not even speak to the real issue in the case — the "regular *rate*" of the drivers. Instead, it provides only that the "regular *work week*" is forty hours . . . .

(Pet. App. 21; emphasis in original.)

In these circumstances, the District Court of Appeal properly concluded that the parties' agreement was one for a daily rate method of payment. It therefore followed that the manner in which the Company computed overtime was proper. 29 C.F.R. § 778.112; *Yadav* v. *Coleman Oldsmobile, Inc.*, 538 F.2d 1206, 1207-1208 (5th Cir. 1976); Wage-Hour Opinion Letter No. 950 (Feb. 12, 1969).

Conclusion.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A.

Corporate Affiliates of South Florida Beverage Corporation

ABC Advertising Corporation
Airway Drive-In Theatre Co., Inc.
Alpert's Warehouse Showrooms, Inc.
Barclay Leasing Corp.
Bedford Mall Cinema, Inc.
Beta One Leasing, Inc.
Cinema AD-Ventures, Inc.
College Square Cinema, Inc.
Coral Television Corporation
Dazzle, Inc.
Dedham Cinema, Inc.
Des Moines Drive-In Theatre Company
Fram-Gard Theatre Corp. of Del.
France Drive-In Corp.
GCC Beverages, Inc.
GCC Beverages of Mass., Inc.
GCC Broadcasting Corp.
GCC-Capricorn I, Inc.
GCC Communications of Boston, Inc.
GCC Communications, Inc.
GCC-Cross of Iron, Inc.
GCC Films, Inc.
GCC-Hanover Street, Inc.
GCC-The Silver Bears, Inc.
GCC Theatres, Inc.
G.C. Theatre Corp. of California
General Cinema Corp. of Arizona, Inc.
General Cinema of Arkansas
General Cinema of California, Inc.

General Cinema Corp. of Connecticut
General Cinema of Florida, Inc.
General Cinema Corp. of Georgia
General Cinema Corp. of Indiana
General Cinema Corp. of Iowa
General Cinema Corp. of Kansas
General Cinema Corp. of Kentucky
General Cinema Corp. of Louisiana
General Cinema Corp. of Maine
General Cinema Corp. of Maryland, Inc.
General Cinema Corp. of Massachusetts
General Cinema Corp. of Michigan
General Cinema Corp. of Minnesota, Inc.
General Cinema Corp. of Mississippi
General Cinema Corp. of Missouri
General Cinema Corp. of Nevada
General Cinema of New Mexico, Inc.
General Cinema Corp. of New York, Inc.
General Cinema Corp. of North Carolina
General Cinema Corp. of Oklahoma, Inc.
General Cinema Corp. of Pennsylvania
General Cinema Corp. of Rhode Island
General Cinema Corp. of South Carolina
General Cinema Corp. of Tennessee
General Cinema Corp. of Texas
General Cinema Corp. of Virginia
General Cinema Corp. of Washington
General Cinema Corp. of Washington, D.C.
General Cinema Corp. of West Virginia
General Cinema Corp. of Wisconsin
Ginger General Joint Venture
Hackensack General Theatre Corp.
Hanover Mall Cinema, Inc.
Hanover Street Productions, Limited

Harundale Cinema, Inc.
Harundale Operating Corp.
Jefferson Square Joint Venture
Jersey Division Realty Corp.
Jersey Second Division Corp.
Joliet Cinema, Inc.
Kokomo Cinema, Inc.
Laconia Theatre Corp.
Lincoln Realty Corporation
London Square Cinema, Inc.
Louis Joliet Cinema, Inc.
Louis Joliet Joint Venture
Madison Cinema, Inc.
Meyerland Cinema, Inc.
Meyerland Leasing Corp.
Midway Drive-In Theatre Co.
Midwest Theatres Corporation
Morris Plains General Theatre Corp.
Nashua Mall Cinema, Inc.
Natick Auto Theatre Corporation
NEMLC Beta Associates
Newport Plaza Cinema, Inc.
Omaha Drive-In Theatre Company
Pepsi-Cola Bottlers of Akron, Inc.
Pepsi-Cola Bottlers of Youngstown, Inc.
Polk Realty Corporation
Route 42 Cinema, Inc.
Shoregate Cinema, Inc.
Southtown Cinema Corp.
Sunkist Soft Drinks, Inc.
Timonium Concessions, Inc.
Timonium Drive-In Theatre Corp.
Timonium Realty Corp.
Totowa General Corp.

Troy Hills General Theatre Corp.
Union General Theatre Corp.
Westgate Brockton Cinema, Inc.
Westgate Cinema, Inc.
Westgate Leasing Corp.
Westwood Triplex Cinema, Inc.